

FIRST REGULAR SESSION

HOUSE BILL NO. 609

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES GRATZ AND RICHARDSON (Co-sponsors).

Read 1st time January 31, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1648L.011

AN ACT

To repeal section 640.010, RSMo 2000, relating to rulemaking authority of the department of natural resources and commissions housed therein, and to enact in lieu thereof two new sections relating to the same subject.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 640.010, RSMo 2000, is repealed and two new sections enacted in lieu thereof, to be known as sections 640.010 and 640.020, to read as follows:

640.010. 1. There is hereby created a department of natural resources in charge of a director appointed by the governor, by and with the advice and consent of the senate. The director shall administer the programs assigned to the department relating to environmental control and the conservation and management of natural resources. The director shall coordinate and supervise all staff and other personnel assigned to the department. [He] **The director** shall faithfully cause to be executed all policies established by the boards and commissions assigned to the department, be subject to their decisions as to all substantive and procedural rules and [his] **the director's** decisions shall be subject to appeal to the board or commission on request of the board or commission [or by affected parties]. The director shall recommend policies to the various boards and commissions assigned to the department to achieve effective and coordinated environmental control and natural resource conservation policies.

2. The director shall appoint directors of staff to service each of the policy making boards or commissions assigned to the department. Each director of staff shall be qualified by education, training and experience in the technical matters of the board to which [he] **such director** is assigned and [his] **such director's** appointment shall be approved by the board to

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 which [he] **such director** is assigned and [he] **such director** shall be removed or reassigned on
17 [their] **his or her** request in writing to the director of the department. All other employees of the
18 department and of each board and commission assigned to the department shall be appointed by
19 the director of the department in accord with chapter 36, RSMo, and shall be assigned and may
20 be reassigned as required by the director of the department in such a manner as to provide
21 optimum service, efficiency and economy.

22 3. The air conservation commission, chapter 203, RSMo, and others, the clean water
23 commission, chapter 204, RSMo, and others, are transferred by type II transfer to the department
24 of natural resources. The governor shall appoint the members of these bodies in accord with the
25 laws establishing them, with the advice and consent of the senate. The bodies hereby transferred
26 shall retain all rulemaking and hearing powers allotted by law, as well as those of any bodies
27 transferred to their jurisdiction. All the powers, duties and functions of the state environmental
28 improvement authority, chapter 260, RSMo, and others, are transferred by type III transfer to the
29 air conservation commission. All the powers, duties and functions of the water resources board,
30 chapter 256, RSMo, and others, are transferred by type I transfer to the clean water commission
31 and the board is abolished. No member of the clean water commission shall receive or shall
32 have received, during the previous two years from the date of his **or her** appointment, a
33 significant portion of his **or her** income directly or indirectly from permit holders or applicants
34 for a permit under the jurisdiction of the clean water commission. The state park board, chapter
35 253, RSMo, is transferred to the department of natural resources by type I transfer.

36 4. All the powers, duties and functions of the state soil and water districts commission,
37 chapter 278, RSMo, and others, are transferred by a type II transfer to the department.

38 5. All the powers, duties and functions of the state geologist, chapter 256, RSMo, and
39 others, are transferred by type I transfer to the department of natural resources. All the powers,
40 duties and functions of the state land survey authority, chapter 60, RSMo, are transferred to the
41 department of natural resources by type I transfer and the authority is abolished. All the powers,
42 duties and functions of the state oil and gas council, chapter 259, RSMo, and others are
43 transferred to the department of natural resources by type II transfer. The director of the
44 department shall appoint a state geologist who shall have the duties to supervise and coordinate
45 the work formerly done by the departments or authorities abolished by this subsection, and shall
46 provide staff services for the state oil and gas council.

47 6. All the powers, duties and functions of the land reclamation commission, chapter 444,
48 RSMo, and others, are transferred to the department of natural resources by type II transfer. All
49 necessary personnel required by the commission shall be selected, employed and discharged by
50 the commission. The director of the department shall not have the authority to abolish positions.

51 7. The functions performed by the division of health in relation to the maintenance of

52 a safe quality of water dispensed to the public, sections 640.100 to 640.115, and others, and for
53 licensing and regulating solid waste management systems and plans are transferred by type I
54 transfer to the department of natural resources.

55 8. (1) The state interagency council for outdoor recreation, chapter 258, RSMo, is
56 transferred to the department of natural resources by type II transfer. The council shall consist
57 of representatives of the following state agencies: department of agriculture; department of
58 conservation; office of administration; department of natural resources; department of economic
59 development; department of social services; department of transportation; and the University of
60 Missouri.

61 (2) The council shall function as provided in chapter 258, RSMo, except that the
62 department of natural resources shall provide all staff services as required by the council
63 notwithstanding the provisions of sections 258.030 and 258.040, RSMo, and all personnel and
64 property of the council are hereby transferred by type I transfer to the department of natural
65 resources and the office of executive secretary to the council is abolished.

**640.020. 1. Notwithstanding any other provision of law to the contrary, the
2 department of natural resources, including any board or commission assigned to the
3 department of natural resources in accordance with section 640.010 that is authorized by
4 statute to adopt rules, may promulgate such rules, pursuant to chapter 536, RSMo, to
5 establish standards, guidelines and requirements to ensure that the state of Missouri is in
6 compliance with the provisions of any applicable federal statutes and federal regulations,
7 including the following:**

8 **(1) The clean air commission may promulgate such rules, pursuant to chapter 536,**
9 **RSMo, to establish standards, guidelines and requirements to ensure that the state of**
10 **Missouri is in compliance with the substantive provisions of the federal Clean Air Act, as**
11 **amended, relating to air pollution control;**

12 **(2) The clean water commission may promulgate such rules, pursuant to chapter**
13 **536, RSMo, to establish standards, guidelines and requirements to ensure that the state of**
14 **Missouri is in compliance with the substantive provisions of the federal Clean Water Act,**
15 **as amended, relating to water pollution control, and subtitle I of the federal Resource**
16 **Conservation and Recovery Act, as amended, relating to underground storage tanks;**

17 **(3) The hazardous waste management commission may promulgate such rules,**
18 **pursuant to chapter 536, RSMo, to establish standards, guidelines and requirements to**
19 **ensure that the state of Missouri is in compliance with the substantive provisions of the**
20 **federal Resource Conservation and Recovery Act, as amended, relating to hazardous waste**
21 **management;**

22 **(4) The land reclamation commission may promulgate such rules, pursuant to**

23 chapter 536, RSMo, to establish standards, guidelines and requirements to ensure that the
24 state of Missouri is in compliance with the substantive provisions of the federal Surface
25 Mining Control and Reclamation Act, as amended, relating to surface mining and land
26 reclamation;

27 (5) The safe drinking water commission may promulgate such rules, pursuant to
28 chapter 536, RSMo, to establish standards, guidelines and requirements to ensure that the
29 state of Missouri is in compliance with the substantive provisions of the federal Safe
30 Drinking Water Act, as amended, relating to drinking water systems; and

31 (6) The department may promulgate such rules, pursuant to chapter 536, RSMo,
32 to establish standards, guidelines and requirements to ensure that the state of Missouri is
33 in compliance with the substantive provisions of subtitle D of the federal Resource
34 Conservation and Recovery Act, as amended, relating to solid waste management.

35 2. The rules promulgated by the department or any commission or board assigned
36 to the department shall not be any stricter than those required by the applicable federal
37 statutes or regulations nor shall such rules be enforced in any area of the state of Missouri
38 prior to the time required by the federal statutes or regulations, unless the department,
39 commission or board makes specific findings, based on competent and substantial evidence
40 in the administrative record, that:

41 (1) Specific circumstances or conditions in the state of Missouri are causing, or have
42 the potential to cause, specific harm to human health and the environment; and

43 (2) Either:

44 (a) The specific circumstances or conditions are not subject to regulation by any
45 applicable federal statute or regulation; or

46 (b) The existing federal statutes or regulations are not sufficient to adequately
47 protect human health and the environment in the state of Missouri; and

48 (3) A more restrictive rule is necessary to address the specific circumstance or
49 condition to prevent or alleviate the specific harm caused to human health and the
50 environment.

51 3. For any rule promulgated pursuant to subsection 2 of this section, the
52 department, commission or board shall specifically enumerate in the administrative record
53 and shall publish in the Missouri Register, along with the notice of proposed rulemaking,
54 findings of fact relative to the specific circumstances or conditions causing harm, the
55 nature and scope of the specific harm to human health and the environment, and the
56 health-based or science-based reasons justifying why the adoption of a more restrictive rule
57 will prevent or alleviate the specific harm to human health and the environment.

58 4. For any rule promulgated pursuant to subsection 2 of this section, the fiscal notes

59 required by sections 536.200 and 536.205, RSMo, shall contain, in addition to the
60 requirements imposed by those sections, a discussion and explanation of the consideration
61 by the department, commission or board of the effects of human health and the
62 environment, economics, pollution prevention and the effectiveness and cost of reasonably
63 available control methods for the proposed more restrictive rule.

64 5. Any rule that is more restrictive than federal statutes or regulations and is
65 adopted by the department or a commission or board assigned to the department without
66 complying with the procedures set forth in this section is void.